A **KARAK LAND SDN BHD v. LUXURY TERRACE SDN BHD**

COURT OF APPEAL, PUTRAJAYA
SEE MEE CHUN JCA
WONG KIAN KHEONG JCA
ISMAIL BRAHIM JCA
B [CIVIL APPEAL NO: W-02(NCVC)(W)-259-02-2022]
24 JUNE 2025

Abstract – *(i) When a clause in a sale and purchase agreement clearly contains a condition precedent with a definitive stop date, and such condition is not met, the contract becomes void under s. 36(1) of the Contracts Act 1950; (ii) Once a sale and purchase agreement is validly terminated, no further obligations remain to be performed. The other party cannot subsequently invoke the termination provisions.*

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D ***CONTRACT:*** *Agreement – Sale and purchase agreement ('SPA') – Termination clause – Failure to obtain consent to transfer of property from Estate Land Board within six months from date of SPA – Whether either party entitled to elect to determine agreement with specific forfeiture and refund terms – Whether contract became void – Whether further obligations remain to be performed once SPA validly*
E *terminated – Contracts Act 1950, s. 36(1) – Evidence Act 1950, ss. 101 & 102*

This appeal arose from a dispute concerning a sale and purchase agreement ('SPA') between the appellant (vendor) and the respondent (purchaser) for the acquisition of a piece of land. The agreed purchase price was RM41,198,650
F and the respondent paid a 10% deposit totaling RM4,119,865. The transaction was explicitly subject to a condition precedent under Schedule 2 of the Special Conditions of the SPA. The critical provision governing termination was cl. 1.2(c), which states: 'In the event the purchaser shall through no fault, default or neglect on his part fail to obtain the consent to transfer within six months from the date of this agreement, either party shall
G be entitled to elect at its sole and absolute discretion, by notice in writing to determine this agreement in which the vendor is entitled to forfeit a sum of RM823,973 (2%) and refund the sum of RM3,295,892 (8%)'. On 17 April 2019, when consent from the Estate Land Board was not obtained within six months from the SPA date, the respondent rejected the extension
H proposal and terminated the SPA, seeking a refund of the 8% deposit. The Estate Land Board approval was eventually granted on 27 May 2019, one month after the contractual deadline. The appellant informed the respondent that the approval was granted and the appellant later issued a notice of termination of the SPA and forfeiture of the entire 10% deposit. The High
I Court allowed the respondent's claim and dismissed the appellant's

counterclaim, ordering the appellant to refund RM3,295,892 to the respondent. The issues that arose for determination were (i) whether cl. 1.2(c) of the Special Conditions in Schedule 2 of the SPA entitled the respondent to terminate the SPA when consent from the Estate Land Board was not obtained within six months from the SPA date. If the respondent was not entitled to terminate, then whether the appellant was entitled to forfeit the 8% deposit; (ii) whether the respondent was guilty of fault, default, or neglect in obtaining the Estate Land Board approval; (iii) whether the respondent waived its right to terminate the SPA; and (iv) whether the appellant was entitled to counter-terminate under cl. 12 of the SPA.

Held (dismissing appeal)
Per Ismail Brahim JCA delivering the judgment of the court:

(1) Clause 1.2(c) unambiguously required the Estate Land Board approval 'within six months from the date of this agreement' with a clear consequence stated therein if this condition was not met. This provision entitled either party to elect to determine the agreement, with specific forfeiture and refund terms. Further, cls. 1.1 (a) and 1.2 (a) did not explicitly impose a positive obligation on the purchaser to follow up on the application beyond the act of applying and obtaining. Applying the principles in *Jaafar Ibrahim v. Gan Kim Kin*, in the present appeal, the uncertain event was the approval from the Estate Land Board and the event had not happened by the deadline of six months (which is undisputed in this case), therefore, under s. 36(1) of the Contracts Act 1950, the contract became void. (paras 32 & 33)

(2) There was no evidence that the failure to obtain consent was due to the fault, default or neglect of the respondent as the purchaser. The appellant bore the burden of proving fault, default or neglect under ss. 101 and 102 of the Evidence Act 1950. The respondent had acted with reasonable promptness. There was no delay in applying for the COT. (paras 35 & 36)

(3) The appellant's purported termination, issued on 4 October 2019, approximately six months after the respondent's valid termination on 17 April 2019, was untenable. Once the SPA was validly terminated by the respondent, no further obligations remained to be performed, and the appellant could not subsequently invoke the termination provisions. (para 40)

Case(s) referred to:
CIMB Bank Bhd v. Anthony Lawrence Bourke & Anor [2019] 2 CLJ 1 FC ***(refd)***
Jaafar Ibrahim v. Gan Kim Kin [1985] CLJU 176; [1985] 1 LNS 176 FC ***(foll)***

Legislation referred to:
Contracts Act 1950, s. 36(1)
Evidence Act 1950, ss. 101, 102

For the appellant - Ramesh K Supramaniam & Kanarasan Ghandinesen; M/s Ramesh K Supramaniam

For the respondent - Alan Chua Hock Kwang & Jowena John; M/s Alan Chua & Co

[Editor's note: Appeal from High Court, Kuala Lumpur; Suit No: W-22NCVC 663-09-2019 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Ismail Brahim JCA:

Introduction

[1] This is an appeal by the appellant/defendant against the decision of the learned High Court Judge in allowing the respondent/ plaintiffs claim in the High Court where the High Court allowed the respondent's claim and dismissed the appellant's counterclaim, ordering the appellant to refund RM3,295,892 to the respondent with costs of RM30,000.

Brief Facts

[2] This appeal arises from a dispute concerning a sale and purchase agreement ("SPA") dated 15 October 2018 between the appellant (as vendor) and the respondent (as purchaser) for the acquisition of a piece of land in Mukim Sabai, Bentong, Pahang, held under Title HS(D) 4712 No PT 2972. The agreed purchase price was RM41,198,650, and the respondent paid a 10% deposit totalling RM4,119,865.

[3] The transaction was explicitly subject to a condition precedent under Schedule 2 of the Special Conditions of the SPA.

[4] Clause 1.1 (a) required "the purchaser applying for and obtaining at its own costs and expense, the approval of the Estate Land Board for the transfer of the property".

[5] Clause 1.2(a) further clarified that "the purchaser has the responsibility of making the application and obtaining the Estate Land Board Approval". The vendor (appellant) was obliged to deliver all relevant documents within seven days of the purchaser's (respondent's) request to enable the application.

[6] The critical provision governing termination was cl. 1.2(c), which states: "in the event the purchaser shall through no fault, default or neglect on his part fail to obtain the consent to transfer within six months from the date of this agreement, either party shall be entitled to elect at its sole and

absolute discretion, by notice in writing to determine this agreement in which the vendor is entitled to forfeit a sum of RM 823,973 (2%) and refund the sum of RM3,295,892 (8%)".

[7] The chronology of events leading to the dispute are as follows:

(i) the SPA was dated 15 October 2018.

(ii) the respondent's initial application to the Pahang Land and Mines Office (PTG) was submitted on 31 October 2018. However, it was rejected because PTG required the chargee bank's letter of consent/ no objection, which was not explicitly stated in Form 14D.

(iii) the respondent's SPA solicitor, Michael Ong (PW2), emailed the appellant's SPA solicitor (John Tong, SP3) requesting the chargee's consent on 31 October 2018.

(iv) the appellant's SPA solicitors provided the required chargee consent from Agro Bank on 7 November 2018, forwarding it to Michael Ong. Lee Tong Leong (SD1), the appellant's Chief Operating Officer, personally brought the original letter to PTG Pahang on 12 November 2018 to expedite submission, as the plaintiff used a Kuantan-based firm, Messrs Hamidah, Rosmawati & Associates, for submissions. The complete application was submitted and acknowledged by PTG on 12 November 2018.

(v) the six-month deadline for obtaining Estate Land Board approval expired on 15 April 2019.

(vi) the appellant's solicitor (John Tong) sent reminders on 14 February 2019 and 6 March 2019 about the expiring six-month period. John Tong then proposed a mutual extension of the period from 13 April 2019 to 13 October 2019 *via* a letter dated 5 April 2019.

(vii) the respondent, *via* its solicitor's letter dated 17 April 2019, rejected the extension proposal and terminated the SPA, seeking a refund of the 8% deposit (RM3,295,892).

(viii) the Estate Land Board approval was eventually granted on 27 May 2019, approximately one month after the contractual deadline.

(ix) the appellant's solicitor informed the respondent that the approval was granted and the appellant later issued a notice of termination of the SPA and forfeiture of the entire 10% deposit on 4 October 2019.

[8] The High Court on 24 January 2022 allowed the respondent's claim and dismissed the appellant's counterclaim, ordering the appellant to refund RM3,295,892 to the respondent.

A **Issues For Determination**

[9] The primary issue for determination is whether cl. 1.2(c) of the special conditions in Schedule 2 of the SPA entitles the plaintiff/purchaser to terminate the SPA when consent from the Estate Land Board was not obtained within six months from the SPA date. If the purchaser is not entitled to terminate, then whether the appellant/vendor is entitled to forfeit the 8% deposit.

[10] Secondary issues include:

(i) whether the respondent was guilty of fault, default, or neglect in obtaining the Estate Land Board approval.

(ii) whether the respondent waived its right to terminate the SPA.

(iii) whether the appellant is entitled to counter-terminate under cl. 12 of the SPA.

Appellant's Arguments

[11] It was submitted that cl. 1.2(c) does not create an automatic termination right but contains a qualification requiring the purchaser to prove that the failure to obtain approval was "through no fault, default or neglect" on their part. The appellant argues that this creates a conditional rather than an absolute right of termination.

[12] The appellant submits that there is no "stop date" provision in the main provisions of the SPA, contending that the six-month timeframe merely entitles parties to elect termination rather than creating an automatic termination. They argue that the respondent does not have the right to invoke cl. 1.2(c) by relying on their own default.

[13] Next it was contended that there were multiple instances of unreasonable delay and inadequate performance by the respondent:

(i) it was pointed out that the delayed initial application submission until 31 October 2018, nearly one month after the SPA.

(ii) failure to secure required chargee consent initially, necessitating resubmission.

(iii) the appellant contends the respondent failed to follow up with the application and in the circumstances showed a lackadaisical attitude on the part of the respondent. To support this contention the appellant referred to the various parts of the testimonies of the respondent's witnesses in the trial.

[14] The appellant argues that time became "at large" because they did not exercise their right to terminate at the six-month deadline, instead continuing efforts to complete the transaction.

[15] They contend that the respondent waived termination rights by subsequently authorising collection of the approval certificate on 24 June 2019.

[16] Alternatively, the appellant claims entitlement to terminate under cl. 12 of the SPA for the respondent's failure to pay the balance purchase price within the completion period (three plus one month from the unconditional date). This failure, the appellant argues, entitles them to forfeit the entire 10% deposit.

Respondent's Arguments

[17] In opposing the appeal, the respondent argues that the SPA contains an unambiguous condition precedent with a definitive "stop date" of six months.

[18] They contend that cl. 1.2(c) clearly states that consent must be obtained within six months, failing which either party may elect to terminate.

[19] The respondent relies on s. 36(1) of the Contracts Act 1950.

[20] The respondent emphasises that the SPA contains no extension provisions, confirming the existence of a definitive stop date. It was further submitted that the appellant's own solicitors proposed an extension by letter dated 5 April 2019, implicitly acknowledging the approaching deadline.

[21] The respondent further contends that their application was submitted promptly within one month of SPA execution, which was reasonable given the need to compile documentation. The initial application was filed on 31 October 2018. The respondent argues that the initial deficiency regarding chargee consent was not their fault, as this requirement was not clearly specified in Form 14D.

[22] The respondent maintains that adequate follow-up was conducted through telephone communications with the Estate Land Board.

[23] The respondent also submitted that even the appellant's own representatives followed up diligently but still could not obtain approval within the six-month timeframe, demonstrating that the delay was not attributable to the respondent's conduct.

[24] The respondent further denies any waiver of termination rights, asserting consistent maintenance of their termination position throughout. This is evidenced by:

A (i) their termination letter dated 17 April 2019.

(ii) the return of all transaction documents to the appellant on 30 April 2019.

(iii) multiple requests for refund on 30 April 2019, 13 June 2019, and
B 24 June 2019.

(iv) their solicitor's (PW2) testimony confirming client instructions to terminate.

[25] The respondent also argues that the authorisation letter for approval
C collection, dated 24 June 2019, was provided merely for "practical reasons" to prevent prejudice to the appellant's "other pending applications with the Estate Land Board".

Our Decision

[26] Section 36(1) of the Contracts Act 1950 provides as follows:
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> (i) contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, the event has not happened, or if, before the time fixed, the event becomes impossible.

[27] Regarding the principle applicable to issue, we refer to the Federal
E Court in *Jaafar Ibrahim v. Gan Kim Kin* [1985] CLJU 176; [1985] 1 LNS 176; [1985] 2 MLJ 24 which held as follows:

> Though the word "condition" or "conditional" or "contingent" was not used in the agreement, on the true construction of the document we held
F that the learned Judge did not err in law or in fact in concluding the 1975 agreement to be a conditional contract or to be technically exact a contingent contract as defined in our Contracts Act 1950. Since the deadline for performance of the contingent condition had been fixed then fulfilment of the obligation on or before December 31, 1977 must be strictly adhered to and the time should not be extended by reference to
G equitable principles (see *Aberfoyle Plantations Ltd v. Khaw Bian Cheng* AIR 1964 SC 978). In our judgment this was a case where time was not merely of the essence of the contract but fulfilment of the promise by the appellant to obtain the approval on or before December 31, 1977 was a condition precedent of the whole contract. As such section 56 of the Contracts Act did not apply and the proper provision should be section
H 36(1) which provides:
>
> > Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, the event has not happened, or if, before the time fixed, the event becomes impossible.

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In the present appeal the uncertain event was the approval for subdivision by the State authority. The respondent promised to transfer her half-share in the land to the appellant if the approval was obtained within two years of the agreement. The event had not happened by the deadline and therefore under s. 36(1) the contract became void. The dismissal of the appellant's claim for specific performance was accordingly correct in law.

[28] Coming back to the present appeal, we are of the view that the learned High Court Judge was correct in applying the established principles of contractual interpretation, In *CIMB Bank Bhd v. Anthony Lawrence Bourke & Anor* [2019] 2 CLJ 1, the Federal Court held that:

[26] We agree with the defendant that parties are bound by the terms of the contract which they entered into and that it is the court's duty to give effect to the clear and plain meaning of the words in the said clause. That is quite trite.

[27] The law recognises the principle of freedom of contract. Parties to a contract are free to determine for themselves what their obligations are. As Sir George Jassel MR said in *Printing and Numerical Registering Company v. Sampson* (1875) LR 19 Eq 462 at 465:

... men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider – that you are not lightly to interfere with this freedom of contract.

[28] It is also trite that an agreement must be construed by the words used in the agreement and the court is not empowered to improve upon the instrument which it is called upon to construct. This we have stated in *Berjaya Times Square Sdn Bhd v. M Concept Sdn Bhd* [2010] 1 CLJ 269; [2010] 1 MLJ 597 where it was reiterated:

The court has no power to improve upon the instrument which it is called upon to construct, whether it be a contract, a statute or article of association. It cannot introduce terms to make it fairer or more reasonable. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning to a reasonable person having all the background knowledge which would reasonable be available to the audience to whom the instrument is addressed; See *Investors Compensation Scheme Ltd v. West Bromwich Building Society*. It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament or the intention of whatever person or body was or is deemed to have been the author of the instrument.

[29] In the present case the provision of cl. 1.1(a) of Schedule 2 of the SPA states:

> *"The Purchaser applying for and obtaining at its own costs and expense, the approval of the Estate Land Board for the transfer of the property" and Clause 1.2(a) of Schedule 2* of the Sale and Purchase Agreement (SPA) states:
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> > "The responsibility for making the application for obtaining the Estate Land Board shall lie with the purchaser and all cost pertaining to the application and for obtaining Estate Land Board approval shall be borne and paid by the purchaser including administrative fees and other fees"
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> These provisions, read in their plain and ordinary meaning, do not explicitly impose a positive obligation on the Purchaser to follow up on the application beyond the act of applying and obtaining. The contractual language, as the High Court found, is clear and unambiguous in our view is correct. Under such circumstances, the Court is bound to give effect to the terms of the SPA, This is consistent with the principle that courts interpret contracts based on their express terms.
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> Now as for Clause 1.2(c) of Schedule 2 of the Sale and Purchase Agreement (SPA) which is central to the present appeal, the Clause reads as follow:
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> > *In the event that the Purchase shall through no fault, default or neglect on his part fail to obtain the Consent to Transfer within [six (6) months] from the date of this Agreement, either party shall be entitled to elect at its sole and absolute discretion, by notice in writing to the other party, to determine this Agreement whereupon the Purchaser hereby irrevocably acknowledges and agrees that the Vendor shall be entitled to forfeit a sum of Ringgit Malaysia Eight Hundred and Twenty Three Thousand Nine Hundred and Seventy Three (RM 823,973.00). Only equivalent to Two (2%) per cent of the Purchase Price and within fourteen (14) days refund and/or cause to be refunded to the Purchaser the balance Ringgit Malaysia Three Million Two Hundred and Ninety Five Thousand Eight Hundred and Ninety Two (RM3,295,892.00) Only equivalent to Eight (8%) per cent of the Purchase Price and all other monies then paid by the Purchaser pursuant to this Agreement free of interestand the provisions of Clause 12.2(b) shall apply.*

[30] In regard to this clause, we are of the considered view that the clause above clearly contains a condition precedent with a definitive stop date.

[31] Clause 1.2(c) unambiguously requires Estate Land Board approval "within six months from the date of this agreement" with a dear consequence stated therein if this condition is not met. This provision entitles either party to elect to determine the agreement, with specific forfeiture and refund terms.

[32] Further from cl. 1.1(a) and 1.2(a) above do not explicitly impose a positive obligation on the purchaser to follow up on the application beyond the act of applying and obtaining.

[33] Applying the principles in *Jaafar Ibrahim v. Gan Kim Kin* (*supra*), in the present appeal the uncertain event was the approval from the Estate Land Board and the event had not happened by the deadline of six months (which is undisputed in this case) therefore under s. 36(1) the contract becames void. A

[34] As to the subsidiary issues, in this case, we have considered the findings of facts of the trial judge and we agree with the trial judge that that there is no evidence that the failure to obtain consent was due to the fault, default, or neglect of the purchaser. B

[35] In this case the appellant bears the burden of proving fault, default, or neglect under ss. 101 and 102 of the Evidence Act 1950. C

[36] We have considered the finding of facts of the trial judge; from the evidence we are of the view the findings were supported by the evidence. From the evidence the respondent has demonstrated that the respondent had acted with reasonable promptness. The High Court found that there was no delay in applying for the COT. D

[37] As to the initial deficiency regarding chargee consent, it cannot be attributed solely to the respondent and the High Court correctly found that "the defendant's solicitors equally shares the blame" for not proactively identifying and providing this requirement. PW3, the appellant's solicitor, confirmed that the letter of no objection could only be obtained by the appellant. E

[38] Regarding follow-up efforts, the respondent's solicitor (PW2) provided oral testimony of making "plenty inquiry by telephone call" to the Estate Land Board. The High Court in our view correctly assessed this evidence, noting that "whilst I do agree that there is no documentary evidence showing such follow up, there is oral evidence by PW2 that a number of telephone calls were made to the land office to enquire on the status. This in itself is evidence, albeit in oral form". F

[39] Crucially, the High Court found that "there was no evidence adduced by the appellant to rebut PW2's evidence on this" and observed that "the COT was not obtained despite the defendant's own follow up with the land office. All this shows that there is no guarantee that the COT will be obtained even if the plaintiff had followed *vide* letter/s and/or e-mail/s to the land office". This further supports the respondent's position that the delay was not due to their fault or lack of diligence. G H

[40] We have also considered the appellant's alternative claim for termination under cl. 12 and based on the facts and evidence in this case, we are of the view that the appellant's purported termination issued on 4 October 2019, approximately six months after the respondent's valid termination on 17 April 2019 is untenable. This is due to the fact that once I

A the SPA was validly terminated by the respondent, no further obligations remained to be performed, and the appellant could not subsequently invoke the termination provisions.

[41] In conclusion we find the High Court's findings were based on proper legal principles and supported by the evidence. The trial judge's evaluation
B of witnesses' testimony and assessment of documentary evidence disclosed no error warranting appellate intervention.

[42] In the circumstances, the appeal is dismissed with costs of RM15,000 subject to allocatur.

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